

## CCRB INVESTIGATIVE RECOMMENDATION

|   |   |  |  |  |  |
|---|---|--|--|--|--|
| Investigator:<br>Chris Olmsted                    | Team:<br>Squad #9   | CCRB Case #:<br>202002691                  | <input checked="" type="checkbox"/> Force<br><input checked="" type="checkbox"/> Abuse | <input checked="" type="checkbox"/> Discourt.<br><input type="checkbox"/> O.L. | <input type="checkbox"/> U.S.<br><input type="checkbox"/> Injury |
| Incident Date(s)<br>Sunday, 04/12/2020 11:50 PM   | Location of Incident:<br>Crossroads Juvenile Detention Facility |  | Precinct:<br>73  | 18 Mo. SOL<br>10/12/2021   | EO SOL<br>5/4/2022   |
| Date/Time CV Reported<br>Tue, 04/14/2020 11:07 AM | CV Reported At:<br>CCRB   | How CV Reported:<br>Call Processing System | Date/Time Received at CCRB<br>Tue, 04/14/2020 11:07 AM                                 |  |  |

[illegible][illegible]

| Subject Officer(s)      | Shield | TaxID  | Command |
|-------------------------|--------|--------|---------|
| 1. Officers             |        |        |         |
| 2. An officer           |        |        |         |
| 3. POM Dana Ladson      | 10196  | 941282 | 073 PCT |
| 4. POM Jean Bellevue    | 15429  | 946774 | 073 PCT |
| 5. POM Rajesh Kohli     | 29425  | 955019 | 073 PCT |
| 6. POM Mohamed Yusuff   | 05941  | 940881 | 073 PCT |
| 7. PO Jon Derise        | 15542  | 938331 | 073 PCT |
| 8. POM James Samuels    | 30541  | 946550 | 073 PCT |
| 9. SGT Zul Chowdhury    | 03491  | 948780 | I.A.B.  |
| 10. POM Jonathan Angulo | 03614  | 950009 | 073 PCT |

| <b>Subject Officer(s)</b>    | <b>Shield</b> | <b>TaxID</b> | <b>Command</b>  |
|------------------------------|---------------|--------------|-----------------|
| 11. POM Benjamin Chen        | 6647          | 960362       | 073 PCT         |
| 12. POM Charles Delgado      | 30469         | 940070       | 073 PCT         |
| 13. SDS Jean Desir           | 03064         | 931633       | VED ZN1         |
| 14. POM Trinity Fields       | 16249         | 967874       | 073 PCT         |
| 15. POM Ryan Hoffner         | 17255         | 961819       | 073 PCT         |
| 16. POM Bryan Lee            | 24709         | 955050       | 073 PCT         |
| 17. POF Selena Lopez         | 13549         | 968585       | 073 PCT         |
| 18. POM James Manginelli     | 06214         | 965301       | 073 PCT         |
| 19. DT3 Liam Ohara           | 04408         | 946632       | VED MCS         |
| 20. POF Diana Orlando        | 13259         | 942803       | 073 PCT         |
| 21. SGT Troy Peacock         | 00507         | 940553       | 073 PCT         |
| 22. POM Joseph Sicari        | 18517         | 959230       | 073 DET         |
| 23. POF Lashonda Porterfield | 02813         | 963699       | 073 PCT         |
| 24. POM Keith Stark          | 03636         | 961325       | GVSD Z1         |
| 25. POF Nickita Beckford     | 04258         | 964388       | 073 PCT         |
| 26. PO Brian Mahon           | 23144         | 949240       | GVSD Z1         |
| 27. PO Daniel Twohig         | 01924         | 962141       | BK TRAN ROB SQD |
| 28. PO Ivan Rodriguez        | 21064         | 959411       | 073 PCT         |

| <b>Witness Officer(s)</b> | <b>Shield No</b> | <b>Tax No</b> | <b>Cmd Name</b> |
|---------------------------|------------------|---------------|-----------------|
| 1. SGT Diane Guillaume    | 02967            | 948216        | 073 PCT         |
| 2. POM David Damico       | 16358            | 957509        | 073 PCT         |
| 3. POM Jesse Slavin       | 18421            | 968139        | 073 PCT         |
| 4. POM Shane Keller       | 19403            | 956792        | LEG BUR         |
| 5. POM Vincenzo Chiarenza | 07378            | 966505        | 073 PCT         |
| 6. POM Shiva Somra        | 31967            | 955521        | 073 PCT         |
| 7. POF Amanda Psareas     | 29505            | 965428        | PBMS            |
| 8. POM James Fowler       | 03099            | 967512        | 073 PCT         |
| 9. POM William Russ       | 02660            | 964746        | 073 PCT         |
| 10. SGT Cory Green        | 00215            | 950531        | 073 PCT         |
| 11. POM Gregory Clena     | 08078            | 964447        | 073 PCT         |
| 12. POM Evrett Kerr       | 28828            | 967139        | 073 PCT         |
| 13. POM Jalen Mccray      | 26814            | 967193        | 073 PCT         |

| <b>Officer(s)</b> | <b>Allegation</b>  | <b>Investigator Recommendation</b> |
|-------------------|--|------------------------------------|
| A. Officers       | Abuse: Officers drew their guns.   |                                    |
| B. Officers       | Force: Officers pointed guns at § 87(2)(b)                                       |                                    |
| C. Officers       | Force: Officers pointed guns at individuals.                                     |                                    |
| D. An officer     | Abuse: An officer threatened individuals with the use of force.                  |                                    |
| E. Officers       | Force: Officers used pepper spray against individuals.                           |                                    |
| F. PO Jon Derise  | Abuse: Police Officer Jon Derise threatened an individual with the use of force. |                                    |
| G. PO Jon Derise  | Discourtesy: Police Officer Jon Derise spoke discourteously to an individual.    |                                    |



| Officer(s)            | Allegation | Investigator Recommendation |
|-----------------------|------------|-----------------------------|
| § 87(2)(g), § 87(4-b) | [REDACTED] | [REDACTED]                  |
| § 87(2)(g), § 87(4-b) | [REDACTED] | [REDACTED]                  |
| § 87(2)(g), § 87(4-b) | [REDACTED] | [REDACTED]                  |
| § 87(2)(g), § 87(4-b) | [REDACTED] | [REDACTED]                  |
| § 87(2)(g), § 87(4-b) | [REDACTED] | [REDACTED]                  |
| § 87(2)(g), § 87(4-b) | [REDACTED] | [REDACTED]                  |
| § 87(2)(g), § 87(4-b) | [REDACTED] | [REDACTED]                  |
| § 87(2)(g), § 87(4-b) | [REDACTED] | [REDACTED]                  |
| § 87(2)(g), § 87(4-b) | [REDACTED] | [REDACTED]                  |
| § 87(2)(g), § 87(4-b) | [REDACTED] | [REDACTED]                  |

## Case Summary

On April 14, 2020, § 87(2)(b) the Administration for Children's Services (ACS) Ombudsman at Crossroads Juvenile Detention Facility, filed this complaint on behalf of § 87(2)(b) a juvenile detained at Crossroads. On April 20, 2020, ACS Administrative Director of Residential Child Care § 87(2)(b) filed duplicate complaint § 87(2)(b) subsequently merged into this complaint, on behalf of § 87(2)(b) a second juvenile detained at Crossroads, after reviewing ACS security footage of the incident.

At approximately 11:50 p.m. on April 12, 2020, ACS staff inside Crossroads called 911 to request NYPD support after they lost control of detainees inside the facility. NYPD responded. During the incident, officers allegedly drew firearms (**Allegation A: Abuse of Authority**, § 87(2)(g) allegedly pointed them at § 87(2)(b) and other individuals (**Allegations B and C: Force**, § 87(2)(g) allegedly threatened to shoot individuals (**Allegation D: Abuse of Authority**, § 87(2)(g) and allegedly used OC spray against individuals (**Allegation E: Force**, § 87(2)(g) PO Jon Derise of the 73<sup>rd</sup> Precinct pointed his taser at individuals (**Allegation F: Abuse of Authority**, § 87(2)(g) and spoke discourteously to them (**Allegation G: Discourtesy**, § 87(2)(g) PO Brian Mahon of the 73<sup>rd</sup> Precinct pointed his taser at an individual (**Allegation H: Abuse of Authority**, § 87(2)(g) an officer spoke discourteously to individuals (**Allegation I: Discourtesy**, § 87(2)(g) and an officer allegedly used a taser against an individual (**Allegation J: Force**, § 87(2)(g) Officers allegedly struck § 87(2)(b) with asps (**Allegation K: Force**, § 87(2)(g) officers allegedly struck § 87(2)(b) with asps (**Allegation L: Force**, § 87(2)(g) an officer allegedly put his knee on § 87(2)(b) neck (**Allegation M: Force**, § 87(2)(g) and an officer allegedly kicked § 87(2)(b) (**Allegation N: Force**, § 87(2)(g) An officer spoke discourteously to individuals (**Allegation O: Discourtesy**, § 87(2)(g) PO Derise used physical force against and made a discourteous statement to an individual (**Allegation P: Force**, § 87(2)(g) **Allegation Q: Discourtesy**, § 87(2)(g) and PO Rajesh Kohli of the 73<sup>rd</sup> Precinct took a discourteous action against an individual (**Allegation R: Discourtesy**, § 87(2)(g) § 87(2)(g), § 87(2)(b)

NYPD Legal provided 10 BWC recordings relevant to this incident. (Board Review [BR] 01) Of the 39 members of service the investigation has identified as having responded to the incident, nine activated their BWC at some point during the incident. NYPD policy is unclear on whether members of service should or may activate their BWCs inside a juvenile detention facility. The CCRB has notified DAO in regards.

Crossroads Juvenile Detention Facility has security footage related to this incident. ACS refused to provide the footage to the CCRB, citing juvenile privacy laws.

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Officers drew their guns.**

**Allegation (B) Force: Officers pointed guns at § 87(2)(b)**

**Allegation (C) Force: Officers pointed guns at individuals.**

**Allegation (D) Abuse of Authority: An officer threatened individuals with the use of force.**

**Allegation (E) Force: Officers used pepper spray against individuals.**

On April 12, 2020, at approximately 10:00 p.m., inside Crossroad Juvenile Detention

Facility ( § 87(2)(b) Brooklyn), an activated sprinkler began flooding “E Hall,” a residential area, with water and oil. ACS staff escorted § 87(2)(b) and between nine and 14 other residents of E Hall off their hall to a multi-purpose room with frosted glass windows in the middle of the facility. At approximately 11:30 p.m., staff members escorting two residents of D Hall, ignorant of the situation on E Hall, escorted them past the multi-purpose room. E Hall residents saw the D Hall residents and a confrontation ensued. Shortly before midnight, as the situation escalated, ACS Tour Commander (TC) § 87(2)(b) instructed staff members to call for NYPD support. PO Damico and PO Shane Keller, then of the 73<sup>rd</sup> Precinct, responded first and radioed for additional units. At least 39 officers responded.

§ 87(2)(b) stated to the CCRB that when NYPD officers entered Crossroads they had their guns drawn, pointed them in § 87(2)(b) face, pointed them in the faces of other juveniles, and that an officer stated, “I’ll shoot your face off.” He further stated that during the incident officers used OC spray against individuals. (BR 02)

§ 87(2)(b) provided full or partial names for nine other residents § 87(2)(b) stated were victims and witnesses in this case. ACS refused to identify residents or confirm the identity of residents, citing juvenile privacy laws. Through police documents, improperly redacted ACS documents, complainant testimony, and witness testimony, the investigation was able to independently confirm the identities of four other residents – § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b). The investigation was unable to obtain statements from any of those individuals.

ACS provided 14 reports related to this incident after redacting juvenile information. TC § 87(2)(b) wrote in his Incident Report, “NYPD did come into the facility with firearms.” No other report mentions firearms. No report mentions OC spray. (BR 03)

The investigation interviewed nine ACS staff members who witnessed portions of this incident: TC § 87(2)(b) Youth Development Specialist (YDS) § 87(2)(b) § 87(2)(b) YDS § 87(2)(b) Associate Youth Development Specialist (AYDS) § 87(2)(b) § 87(2)(b) AYDS § 87(2)(b) AYDS § 87(2)(b) § 87(2)(b) ACS Sergeant § 87(2)(b) ACS Special Officer (SO) § 87(2)(b) and Operations Manager § 87(2)(b) § 87(2)(b). No ACS staff member testified to seeing an officer with a drawn firearm at any point during the incident. No ACS staff member testified to an officer using OC spray during the incident or feeling the effects of OC spray having been used indoors in a space they also occupied. (BR 04-12)

The investigation reviewed BWC footage from POs Derise, Slavin, Damico, Keller, Beckford, Orlando, Fowler, Lopez, and Kohli. Although these videos do not capture the entirety of the incident, none shows an officer with a firearm drawn. None shows an officer holding OC spray or a use of OC spray. (BR 13)

The investigation interviewed seven members of service: POs Derise, Mahon, and Kohli, POs David Damico and Jesse Slavin, both then of the 73<sup>rd</sup> Precinct, and Sergeants Cory Green and Diane Guillaume, also both then of the 73<sup>rd</sup> Precinct. No officer recalled drawing a firearm or seeing an officer with a drawn firearm during the incident. No officer recalled using OC spray or noticing the effects of OC spray having been used indoors in a space they also occupied. (BR 14-20)

§ 87(2)(g)

**Allegation (F) Abuse of Authority: Police Officer Jon Derise threatened an individual with the use of force.**

**Allegation (G) Discourtesy: Police Officer Jon Derise spoke discourteously to an individual.**

**Allegation (H) Abuse of Authority: Police Officer Brian Mahon threatened an individual**

**with the use of force.**

**Allegation (I) Discourtesy: An officer spoke discourteously to individuals.**

**Allegation (J) Force: An officer used a non-lethal restraining device on an individual.**

It is undisputed that for a portion of this incident some juveniles were contained in a multipurpose room with frosted glass windows through which one could see only silhouettes of the individuals on the other side of the glass.

§ 87(2)(b) stated that during the incident he saw an officer use a taser against an individual. He stated he could not see who the individual was and he could not describe the officer. (BR 02)

POs Derise (BR 16), Damico (BR 14), and Slavin (BR 18), Sergeant Guillaume (BR 15), SO § 87(2)(b) (BR 08), AYDS § 87(2)(b) (BR 11), AYDS § 87(2)(b) (BR 10), and YDS § 87(2)(b) (BR 12) recalled that during the incident a group of unsecured juveniles ran into an area near the multipurpose room and encountered NYPD officers. SO § 87(2)(b) wrote in his Incident Report and also testified that the juveniles in question were armed with sticks or broken mop handles. (BR 03) No ACS staff member recalled witnessing or learning about an officer using a taser against an individual (BR 04-12). TC § 87(2)(b) recalled a resident alleging an officer used a taser against him during the incident afterwards (BR 04). No member of service recalled deploying a taser against an individual or seeing another officer do so. (BR 14-20)

BWC footage from PO Slavin shows between 3:14 and 3:39 that he and PO Derise responded to the appearance of these armed, unsecured juveniles. That section shows the juveniles surrendering, an officer picking up a stick or broken handle, and PO Derise pointing his taser at a juvenile until another officer places the juvenile in handcuffs. Once the juvenile is in handcuffs, PO Derise puts his taser away. (BR 21) In the relevant section of PO Derise's BWC recording, 12:00 through 12:40, PO Derise's BWC is obscured. However, the audio recorded in that section captures an officer yelling, "put it down," and a clattering sound. It also captures PO Derise stating twice, "on the fucking ground." (BR 22)

PO Derise recalled this interaction. Although he initially recalled that the individual was armed with a chair rather than a stick, PO Derise stated that in response to the unexpected presence of an armed, unsecured juvenile he pointed his taser's red dot laser at the individual's chest. He stated he did so because it would have been dangerous to physically approach the individual. He stated he holstered his taser as soon as the individual was secured. (BR 16)

PO Slavin's BWC recording shows between 07:30 and its end at 08:33 that after the loose juveniles were secured, officers gathered near the door of the multipurpose room before entering it and securing the juveniles inside. PO Slavin's footage shows several officers have their tasers drawn before entering the room, but it captures only one instance of an officer pointing their taser at an individual. At 07:52, the arm of a white male officer in plain clothes is visible pointing his taser at an individual lying face-down on the ground. (BR 21)

PO Mahon watched PO Slavin's BWC recording of the incident and identified the arm as his. He stated that when he arrived at Crossroads, multiple juveniles were already contained in the multipurpose room and they were banging on the windows. He stated he drew his taser before entering the room but did not recall when he drew it or why he did so. When he and other officers entered the multipurpose room to secure the juveniles inside, PO Mahon kept his taser out to use it to gain voluntary compliance. He focused on one individual and pointed his taser's red dot laser at the individual. The individual complied with officer instructions and PO Mahon put his taser away when the room was secure. (BR 19)

PO Derise's BWC recording of the incident at 16:28 shows that when officers entered the multipurpose room, at least one officer yelled, "everyone on the fucking ground." (BR 22)

No BWC recording from the incident captures an officer using a taser against an individual (BR 13) However, PO Orlando's BWC recording from the incident captures at 01:13 the electronic clicking sound of a taser being fired out of frame. (BR 23)

Patrol Guide Procedure 221-08 on the use of Conducted Energy Weapons directs officers to



consider the following factors when “determining the appropriate use of force”:

- a. The nature and severity of crime/circumstances,
- b. Actions taken by subject,
- c. Duration of action,
- d. Immediacy of perceived threat or harm to subject, members of the service, and/or bystanders,
- e. Whether the subject is actively resisting custody,
- f. Whether the subject is attempting to evade arrest by flight,
- g. Number of subjects in comparison to number of MOS,
- h. Size, age, and condition of subject in comparison to MOS,
- i. Subject’s violent history, if known,
- j. Presence of hostile crowd or agitators, and/or
- k. Subject apparently under influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.”

It further states, “The verbal warning may be used in conjunction with laser/arc warnings in order to gain voluntary compliance and prevent the need to use force.” (BR 25)

Patrol Guide Procedure 200-02 states that officers pledge to “Maintain a higher standard of integrity than is generally expected of others because so much is expected of us” and to “Value human life, respect the dignity of each individual and render our services with courtesy and civility.” (BR 28)

In DAO-DCT Case Number: 2017-17276, the court held that language which would ordinarily be inappropriate in dealing with civilians may be excused in the course of a violent and stressful confrontation. (BR 26)

PO Derise pointed his taser at an individual who had surprised officers and staff members from a side area, was armed, and was accompanied by two others. He used profanity during this violent and stressful confrontation. PO Mahon pointed his taser at an individual while he and other officers were entering a room into which they could not see but which they knew to contain multiple juveniles who had participated in the disturbance and collapse of order in the facility. An officer used profanity during this stressful and potentially violent confrontation. § 87(2)(g)

§ 87(2)(b) could not identify the individual he stated he saw tased. The investigation was unable to obtain witness statements from other detainees, and no ACS witness or member of service recalled an individual being tased, but an ACS staff member recalled a juvenile alleged at the time that he had been tased. None of the extant BWC footage captures an individual being tased, but the BWC footage does not capture the entire incident and at least one video appears to capture a taser being fired out of frame. The investigation was not permitted to review security footage from inside the facility. § 87(2)(g)

**Allegation (K) Force: Officers struck § 87(2)(b) with asps.**

**Allegation (L) Force: Officers struck § 87(2)(b) with asps.**

**Allegation (M) Force: An officer used physical force against § 87(2)(b)**

**Allegation (N) Force: An officer used physical force against § 87(2)(b)**

§ 87(2)(b) stated that during the incident officers struck him with batons on his back, arms, and legs. He stated he saw officers strike § 87(2)(b) in the face and head with batons and saw an officer put his knee onto § 87(2)(b) neck. He could not describe any of the officers



involved. (BR 03) Director § 87(2)(b) stated that while reviewing ACS security footage from the incident it appeared to her that at approximately 12:21 a.m. on April 13, 2020, an officer wearing a hooded sweatshirt kicked § 87(2)(b) three times. (BR 24)

None of the above actions are captured by the extant BWC recordings of the incident. (BR 13) The CCRB was not permitted to review ACS security footage from the incident.

Of the ACS staff members interviewed, YDS § 87(2)(b) AYDS § 87(2)(b) and SO § 87(2)(b) stated they did not recall witnessing these allegations (BR 05)(BR 06)(BR 08), OM § 87(2)(b) and YDS § 87(2)(b) stated they were not in positions to have witnessed whether these allegations occurred (BR 09)(BR 12), and TC § 87(2)(b) Sergeant § 87(2)(b) and YDS § 87(2)(b) stated they did not witness officers use asps against residents (BR 04)(BR 07)(BR 10). YDS § 87(2)(b) recalled seeing officers use takedowns against residents but did not witness other uses of physical force (BR 10).

OM § 87(2)(b) and TC § 87(2)(b) stated that after the incident residents alleged they were injured by officers (BR 09)(BR 04). TC § 87(2)(b) stated residents alleged officers had struck them and used asps against them. (BR 04)

Of the members of service interviewed, PO Mahon, PO Damico, Sergeant Guillaume, and PO Derise stated they neither took nor saw any of these alleged actions. PO Derise stated he had his asp out during the incident but did not use it. (BR 19)(BR 15)(BR 14)(BR 16) Sergeant Green stated he could not have witnessed these alleged actions because he arrived on scene after all juveniles were secured in their cells and PO Kohli stated he did not recall whether he took these actions or saw another officer take them. (BR 17)(BR 20)

PO Slavin stated that he saw an officer strike a juvenile with an asp during this incident. He could not clearly recall when he saw the strike. He watched his BWC recording from the incident but it did not refresh his recollection of the asp strike. He did not use physical force against juveniles and did not see other officers do so. (BR 18)

PO Slavin's BWC footage at 7:43 captures an officer in plain clothes who appears to be wearing a hooded sweatshirt. (BR 21) No interviewed member of service was able to identify this officer. (BR 14-20)

§ 87(2)(b) alleged officers used physical force and asp strikes against himself and others, but he could not describe the officers who did so. § 87(2)(b) reviewed ACS footage that she believed showed an officer using physical force against a juvenile, but the CCRB was not permitted to review the ACS footage at the center of § 87(2)(b) complaint. No ACS staff member recalled witnessing the alleged uses of force, but two recalled that residents alleged at the time of the incident that they had been hit and/or struck with asps. One NYPD officer was certain he saw another officer strike a civilian with an asp, but he could not recall who that officer was or the specifics of the interaction he witnessed. None of the extant BWC footage captures these allegations. § 87(2)(g)

§ 87(2)(g)

**Allegation (O) Discourtesy: An officer spoke discourteously to individuals.**

**Allegation (P) Force: Police Officer Jon Derise used physical force against an individual.**

**Allegation (Q) Discourtesy: Police Officer Jon Derise was discourteous to an individual.**

**Allegation (R) Discourtesy: Police Officer Rajesh Kohli acted discourteously toward an individual.**

PO Derise's BWC recording shows beginning at 17:20 that once officers had secured the juveniles inside the frosted glass room officers escort the individuals down a hall and into cells in a residential part of the facility. PO Derise escorts a juvenile in a green sweatshirt. At 17:33 in PO Derise's recording, a juvenile being escorted is heard asking, "why you using so much force, sir?" An officer responds by yelling several times, "shut the fuck up." At this point the juveniles are handcuffed and surrounded by both NYPD officers and ACS staff. The captured yells are not close

enough to PO Derise's BWC for PO Derise to be the officer yelling. At 18:44 in PO Derise's recording, PO Derise states, "get in the fucking cell" and appears to push the left arm of the handcuffed juvenile in the green sweatshirt. The juvenile lurches forward into a cell and his legs seem to make contact with the door frame. An officer (PO Kohli) is inside the cell and still holding the juvenile's right arm. The floor of the cell is flooded. PO Derise states, "put him down in the fucking water." PO Kohli releases the juvenile, whose left shoe has come off, and allows him to fall into a puddle of water on the floor of the cell next to an apparently dry bed. He exits the cell and PO Derise closes the door. No officer removes the juvenile's handcuffs. (BR 22)

PO Kohli's BWC recording is less than a minute long but shows part of these interactions. At 00:32, PO Kohli and PO Derise are on either side of a juvenile in a green sweatshirt escorting him out of the multipurpose room. At 00:36, a juvenile being escorted is heard asking, "why you using so much force, sir?" An officer responds by yelling several times, "shut the fuck up." The officer sounds close to PO Kohli's BWC but does not appear to speak with PO Kohli's accent. (BR 27)

PO Derise initially stated that during this process he may have told a fellow officer in front of a civilian to "put [the civilian] on the fucking ground." He stated he recalled making the statement "put him in the fucking water" and stated he made that statement because the prisoner, although handcuffed, was not responding to minimal force or verbal persuasion to go into the cell voluntarily so officers "had to go to the next logical step." PO Derise stated there was "not necessarily" law enforcement value to his comment in the moment.

PO Derise watched his body-worn camera recording from the incident between 00:15:58 and 00:16:50. He confirmed he could hear the audio, which captures him stating to a civilian "get in the fucking cell" and to another officer in front of and about a civilian "put him down in the fucking water," and stated he made those statements. He stated he used profanity because it was a tense, stressful situation. He stated that while officers were not outnumbered, they were locked into the facility with the inmates, that the inmates were "noncompliant to a certain degree," and that they were "less than cooperative." He could not elaborate on what if any physical resistance the individual he was escorting offered. (BR 16)

PO Kohli initially stated he did not fully recall this incident. He watched his BWC recording from 00:32 to 00:45 and stated he did not hear in the video an individual ask officers why they were using so much force. He further stated he did not hear the repeated comment, "shut the fuck up." PO Kohli stated that there was much commotion during the incident and that maybe he told a civilian, "shut the fuck up." He stated he could not say whether any other officer made that statement. PO Kohli watched PO Derise's BWC recording from the incident from 17:25 to 17:33 and stated he did not hear a civilian ask why officers were using so much force. He watched through 17:43 and stated he could not hear the comment, "shut the fuck up." He watched through 18:50 and stated he heard PO Derise state, "get him in the fucking cell, put him in the fucking water." PO Kohli initially stated he did not deliberately put a civilian into water during the incident before ultimately stating he had no independent recollection of this interaction. (BR 20)

No other BWC recording captures the officer yelling "shut the fuck up." (BR 13) None of the interviewed officers testified to making or witnessing a specific officer make that statement. (BR 14-20)

Patrol Guide Procedure 221-02 states, "when a member of the service must gain compliance, control, or custody of an uncooperative subject" members of service should "Utilize de-escalation techniques when appropriate and consistent with personal safety, which may reduce or eliminate the need to use force, and increase the likelihood of gaining the subject's voluntary compliance," "immediately request a supervisor to respond, as soon as appropriate and safety permits," "advise the offender that physical force or other devices (e.g., O.C. pepper spray, shield, baton/asp, etc.) will be used to handcuff/restrain him/her before applying such force, if appropriate," and "assess the situation continually and adjust the use of force as necessary." (BR 35)

Patrol Guide Procedure 200-02 states that officers pledge to "Maintain a higher standard of integrity than is generally expected of others because so much is expected of us" and to "Value human life, respect the dignity of each individual and render our services with courtesy and civility." (BR 28)

In DAO-DCT Case Number: 2017-17276, the court held that language which would ordinarily be inappropriate in dealing with civilians may be excused in the course of a violent and stressful confrontation. (BR 25)

Two BWC recordings capture an officer repeatedly screaming "shut the fuck up" at a handcuffed juvenile who is surrounded by NYPD officers and ACS staff. This use of profanity does not occur during a violent or stressful confrontation – officers have the situation under control, all juveniles in the area are handcuffed, officers significantly outnumber them, and the juvenile at whom the officer is yelling had just addressed the officer as "sir." § 87(2)(g)

BWC footage captures PO Derise shoving a handcuffed civilian. The footage shows the civilian was completely under police power and that officers outnumbered civilians in the area. It does not show the civilian resisting officers. PO Derise stated he used physical force against the civilian to overcome the civilian being "noncompliant to a certain degree," but he could not describe what if any actions the civilian took. The Patrol Guide requires officers to continually assess situations and adjust their use of force. BWC evidence contradicts the idea that PO Derise needed to use force to gain compliance, control, or custody of the individual he shoved. Even if the civilian in some way resisted PO Derise without the actions being captured on BWC or standing out in PO Derise's memory, at this point in the incident the Patrol Guide force guidelines expected PO Derise to attempt to deescalate the situation, request the assistance of one of the multiple supervisors on scene if he was unable to deescalate the situation, and provide the civilian with a verbal warning that continued resistance would lead to physical force before using any such physical force on the individual. PO Derise took none of these actions. § 87(2)(g)

BWC footage shows that after PO Derise shoved the civilian, the civilian began falling to the flooded ground. PO Derise instructed PO Kohli to drop the civilian into the water. PO Kohli was still holding the civilian's arm when the civilian began to fall. Rather than assist the civilian, PO Kohli released him, allowing the civilian to fall completely into the water at PO Kohli's feet. Neither PO Derise nor PO Kohli offered testimony to contextualize or explain their decisions in these moments. PO Derise alleged that the civilian was resisting entering his cell and that putting him in the puddle of water was "the next logical step," but BWC footage does not capture this resistance, PO Derise could not describe the resistance or explain how dropping the handcuffed juvenile into a puddle on the ground was a logical step, and PO Derise stated there was "not necessarily" a law enforcement value to his comment. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party. (BR 29)
- This is the first CCRB complaint to which § 87(2)(b) has been a party. (BR 30)
- This is the first CCRB complaint to which § 87(2)(b) has been a party. (BR 31)
- PO Derise has been a member of service for 16 years and has been a subject in 15 other CCRB complaints and 32 other allegations, of which 6 were substantiated:
  - 201204122 involved a substantiated allegation of Discourtesy – Word against PO Derise. The Board recommended Command Discipline and the NYPD imposed no penalty.
  - 201410499 involved a substantiated allegation of Abuse of Authority – Refusal to Process Civilian Complaint against PO Derise. The Board recommended Command Discipline B and the NYPD imposed Command Discipline A.
  - 201607619 involved a substantiated allegation of Discourtesy – Word (twice), Abuse of Authority – Threat of Arrest, and Abuse of Authority – Threat of Force against PO Derise. The Board recommended Command Discipline B and there is no record of the NYPD's response, if any.
  - Nine other allegations of Discourtesy – Word have been pleaded and three substantiated against PO Derise. Specifically, it was substantiated in 201204122, unsubstantiated in 201204550, closed as Complainant Unavailable in 201204970, unsubstantiated in 201211235, substantiated twice and unsubstantiated twice in 201607619, and closed as Complainant Uncooperative in 201906879. § 87(2)(g)
- PO Mahon has been a member of service for 11 years and has been a subject in 5 other CCRB complaints and 11 other allegations, of which 3 were substantiated:
  - 201102448 involved substantiated allegations of Abuse of Authority – Question and Abuse of Authority – Stop against PO Mahon. The CCRB recommended Charges and the NYPD imposed no penalty.
  - 201903672 involved a substantiated allegation of Abuse of Authority – Failure to Provide RTKA Card against PO Mahon. The CCRB recommended Command Level Instructions and the NYPD imposed Instruction.
  - § 87(2)(g)
- PO Kohli has been a member of service for 8 years and has been a subject in 1 other CCRB complaints and 1 other allegation, which was not substantiated. § 87(2)(g)

### **Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- As of January 18, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to this complaint. (BR 32)
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 09

|               |  |   |   |
|---------------|--|---|---|
| Investigator: | <u>Christopher Olmsted</u><br>Signature                  | <u>Investigator Chris Olmsted</u><br>Print Title & Name           | <u>03/17/2022</u><br>Date                           |
| Squad Leader: | <u>Monique West</u><br>Signature                         | <u>IM Monique West</u><br>Print Title & Name                      | <u>                    </u><br>Date                 |
| Reviewer:     | <u>                                    </u><br>Signature | <u>                                    </u><br>Print Title & Name | <u>                                    </u><br>Date |